

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 1070

STATE OF NEW JERSEY  
ADOPTED MARCH 15, 1993

Sponsored by Senators McNAMARA, RICE,  
Assemblymen Albohn, DiGaetano,  
Assemblywoman Crecco and Assemblyman Pascrell

An ACT concerning the remediation of contaminated property, amending and supplementing P.L.1983, c.330, amending P.L.1976, c.141, supplementing Title 58 of the Revised Statutes, amending P.L.1993, c.112, and making an appropriation from the "Hazardous Discharge Bond Act of 1986.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1983, c.330 (N.J.S.A. 13:1K-6) is amended to read as follows:

**N.J.S.A. 13:1K-6 Short title.**

This act shall be known and may be cited as the "Industrial Site Recovery Act."

2. Section 2 of P.L.1983, c.330 (N.J.S.A. 13:1K-7) is amended to read as follows:

**N.J.S.A. 13:1K-7 Findings, declarations.**

The Legislature finds that discharges of toxic chemicals dating back to early industrialization have left a legacy of contaminated industrial property in this State; that in 1983, due to the growing public awareness and concern of the risks to the public health and the environment and the potential costs to the State to clean up abandoned contaminated sites, the "Environmental Cleanup and Responsibility Act" was enacted. The Legislature also finds that the act's imposition of a cleanup plan approval before the transfer or upon the closing of an industrial establishment and the requirement to establish a funding source for the cleanup are in the general public interest by ensuring the discovery of contamination, by assuring that funding for cleanup is set aside at the time it is available from a transfer or closing, and by assuring that contaminated property is not abandoned to the State for cleanup. The Legislature further finds that at the time of the act's passage, the extent of the State's industrial contamination and the

cost and complexity of remediations were not well understood; that in the intervening years, there has been a significant advance in the body of knowledge concerning how to remediate contaminated sites effectively and how to manage the remediation efficiently; that the regulated and financial communities are now more familiar with the liabilities involving contaminated property and with the necessity to discover and remediate that contamination; and that it is in the interest of the environment and the State's economic health to promote certainty in the regulatory process by incorporating that knowledge to create a more efficient regulatory structure and to allow greater privatization of that process where it is possible to do so without incurring unnecessary risks to the public health or the environment.

The Legislature therefore declares that it is the policy of this State to protect the public health, safety, and the environment, to promote efficient and timely cleanups, and to eliminate any unnecessary financial burden of remediating contaminated sites; that these policies can be achieved by streamlining the regulatory process, by establishing summary administrative procedures for industrial establishments that have previously undergone an environmental review, and by reducing oversight of those industrial establishments where less extensive regulatory review will ensure the same degree of protection to public health, safety, and the environment; and that the new procedures established pursuant to this act shall be designed to guard against redundancy from the regulatory process and to minimize governmental involvement in certain business transactions.

3. Section 3 of P.L.1983, c.330 (N.J.S.A. 13:1K-8) is amended to read as follows:

**N.J.S.A. 13:1K-8 Definitions.**

As used in this act:

**"Remedial action workplan"** means a plan for the remedial action to be undertaken at an industrial establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the implementation of the remedial action; and any other relevant information the department deems necessary;

**"Closing operations"** means:

(1) the cessation of operations resulting in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment, as measured on a constant, annual date-specific basis, within any five year period, or, for industrial establishments for which the product output is undefined, a 90 percent reduction in the number of employees or a 90 percent reduction in the area of operations of an industrial establishment within any five year period; provided, however, the department may approve a waiver of the provisions of this paragraph for any owner or operator who, upon application and review, evidences a good faith effort to maintain and expand product output, the number of employees, or area of operations of the affected industrial establishment;

(2) any temporary cessation of operations of an industrial establishment for a period of not less than two years;

(3) any judicial proceeding or final agency action through which an industrial establishment becomes nonoperational for health or safety reasons;

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. ' 701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. ' 1101 et seq.;

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;

**"Transferring ownership or operations" means:**

(1) any transaction or proceeding through which an industrial establishment undergoes a change in ownership;

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five year period, as measured on a constant, annual date-specific basis;

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; or

(4) the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

**"Change in ownership" means:**

(1) the sale or transfer of the business of an industrial establishment or any of its real property;

(2) the sale or transfer of stock in a corporation resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

(3) the sale or transfer of stock in a corporation, or the transfer of a partnership interest, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment;

(4) the sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase; or

(5) the sale or transfer of a partnership interest in a partnership that owns or operates an industrial establishment, that would reduce, by 10% or more, the assets available for remediation of the industrial establishment;

**"Change in ownership" shall not include:**

(1) a corporate reorganization not substantially affecting the ownership of the

industrial establishment;

(2) a transaction or series of transactions involving the transfer of stock, assets or both, among corporations under common ownership, if the transaction or transactions will not result in the diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10%, or if an equal or greater amount in assets is available for the remediation of the industrial establishment before and after the transaction or transactions;

(3) a transaction or series of transactions involving the transfer of stock, assets or both, resulting in the merger or de facto merger or consolidation of the indirect owner with another entity, or in a change in the person holding the controlling interest of the indirect owner of an industrial establishment, when the indirect owner's assets would have been unavailable for cleanup if the transaction or transactions had not occurred;

(4) a transfer where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling, or sibling of a parent of the transferee;

(5) a transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;

(6) a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

(7) a transfer of an industrial establishment by devise or intestate succession;

(8) the granting or termination of an easement or a license to any portion of an industrial establishment;

(9) the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (N.J.S.A 20:3-1 et seq.);

(10) execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; or

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral.

**"Department"** means the Department of Environmental Protection and Energy;

**"Hazardous substances"** means those elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. ' 1321) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to Section 307 of that act (33 U.S.C. ' 1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this act;

**"Hazardous waste"** shall have the same meaning as provided in section 1 of P.L.1976, c.99 (N.J.S.A. 13:1E-38);

**"Industrial establishment"** means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (N.J.S.A. 13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (N.J.S.A. 13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C. ' 6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (N.J.S.A. 52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

**"Negative declaration"** means a written declaration, submitted by the owner or operator of an industrial establishment or other person assuming responsibility for the remediation under paragraph (3) of subsection (b) of section 4 of P.L.1983, c.330 to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been remediated in accordance with procedures approved by the department and in accordance with any applicable remediation regulations;

**"Discharge"** means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State;

**"No further action letter"** means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

**"Indirect owner"** means any person who holds a controlling interest in a direct owner

or operator, holds a controlling interest in another indirect owner, or holds an interest in a partnership which is an indirect owner or a direct owner or operator, of an industrial establishment;

**"Direct owner or operator"** means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (N.J.S.A. 58:10-23.llg4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

**"Area of concern"** means any location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

**"Remediation standards"** means the combination of numeric and narrative standards to which hazardous substances or hazardous wastes must be investigated or remediated as established by the department pursuant to section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12);

**"Owner"** means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an owner of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (N.J.S.A. 58:10-23.llg4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

**"Operator"** means any person, including users, tenants, or occupants, having a.nd exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (N.J.S.A. 58:10-23.llg4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

**"Preliminary assessment"** means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any hazardous substance or hazardous waste is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of public records;

**"Remediation" or "remediate"** means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of hazardous substances or hazardous wastes, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action;

**"Remedial action"** means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department to protect public health, safety, and the environment. These actions may include the removal, treatment, containment, transportation, securing, or other engineering measures, whether of a permanent nature or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable remediation standards;

**"Remedial investigation"** means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collection, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

**"Site investigation"** means the collection and evaluation of data adequate to determine whether or not discharged hazardous substances or hazardous wastes exist at the industrial establishment or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

4. Section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) is amended to read as follows:

**N.J.S.A. 13:1K-9 Closing, transfer procedures.**

(a) The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.); state the date of the closing of operations or the date of the public release of the decision to close operations as evidenced by a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer

ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330.

(b)(1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, no further action letter, or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, no further action letter, or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, overnight delivery, or personal service, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

(c) The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection (e) of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in section 6 of P.L.1983, c.330 (N.J.S.A. 13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139 (N.J.S.A. 13:1K-11.2, N.J.S.A. 13:1K-11.5, N.J.S.A. 13:1K-11.6 and N.J.S.A. 13:1K-11.7), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection (e) of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3), has been established.

(d)(1) Upon the submission of the results of either the preliminary assessment, site



investigation, remedial investigation, or remedial action, where applicable, which demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation standards, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection (c) of this section.

(2) After the submission and review of the information submitted pursuant to a preliminary assessment, site investigation, remedial investigation, or remedial action, as necessary, the department shall, within 45 days of submission of a complete and accurate negative declaration, approve the negative declaration, or inform the owner or operator of the industrial establishment that a remedial action workplan or additional remediation shall be required. The department shall approve a negative declaration by the issuance of a no further action letter.

(e) The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimate of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.) or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (N.J.S.A. 13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and the implementation of the remedial action workplan, prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete

and accurate submission of the documents required to be submitted pursuant to this subsection.

The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator's right to avail itself of the provisions of section 6 of P.L.1983, c.330 (N.J.S.A. 13:1K-11), of section 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139 (N.J.S.A. 13:1K-11.2, N.J.S.A. 13:1K-11.3, N.J.S.A. 13:1K-11.4, N.J.S.A. 13:1K-11.5, N.J.S.A. 13:1K-11.6 or N.J.S.A. 13:1K-11.7), or of the other provisions of this section.

(f) An owner or operator of an industrial establishment may perform a preliminary assessment, site investigation, or remedial investigation for a soil, surface water, or groundwater remediation without the prior submission to or approval of the department, except as otherwise provided in a remediation agreement required pursuant to subsection (e) of this section. However, the plans for and results of the preliminary assessment, site investigation, and remedial investigation may, at the discretion of the owner or operator, be submitted to the department for its review and approval at the completion of each phase of the remediation.

(g)(1) The soil remediation standard to be implemented on an industrial establishment shall be selected in conformance with the policies and criteria enumerated in section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12).

(2) The department may not disapprove the use of the minimum nonresidential soil remediation standards adopted by the department except upon a finding that the use of the nonresidential soil remediation standards at that site would not be protective of public health, safety, or the environment or except as provided in subsection i. of this section.

(h) An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department, which schedules shall not exceed five years from the commencement of the implementation of the remedial action and if the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department.

Nothing in this subsection shall be construed to authorize the closing of operations or the transfer of ownership or operations of an industrial establishment without the department's approval of a negative declaration, a remedial action workplan or a remediation agreement.

(i) An owner or operator of an industrial establishment shall base his decision to use the nonresidential use soil remediation standards for the industrial establishment upon the criteria listed below, as applicable:

(1) The soil remediation standards proposed for the industrial establishment are protective of public health, safety and the environment;

(2) The accessibility of the industrial establishment to persons not authorized to enter the site;

- (3) The transferee of the industrial establishment has agreed to the implementation of the nonresidential use soil remediation standards;
- (4) The potential for hazardous substances or hazardous wastes to affect any other property;
- (5) The difference in cost between the use of the residential use soil remediation standards and the nonresidential use soil remediation standards; and
- (6) Consistency with regulations established by the Pinelands Commission pursuant to P.L.1979, c-111 (N.J.S.A. 13:18A-1 et seq.).

The department shall, within 18 months of the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), promulgate regulations to clearly define how the department will evaluate the application of the criteria enumerated in paragraphs (1) through (6) of this subsection; provided, however, that notwithstanding the preceding requirement, the criteria enumerated in paragraphs (1) through (4) and in paragraph (6) shall become immediately operative. Until the department promulgates those regulations, it shall impose reasonable standards and requirements upon any owner or operator deciding to use nonresidential use soil remediation standards pursuant to this subsection. Furthermore, the department shall not impose any requirement or standard with regard to the criterion enumerated in paragraph (5) that would require an owner or operator to implement residential use soil remediation standards unless the cost difference between implementing the residential standards and the nonresidential standards is a de minimis amount. For the purposes of the preceding, de minimis shall mean a cost difference not exceeding 10 percent of the cost of implementing the nonresidential standards.

At any time after the effective date of P.L.1993, c.139, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the criteria set forth above in paragraphs (1) through (6). The department shall provide any such determination within 30 calendar days of the department's receipt of the request.

(j) An owner or operator proposing to implement a soil remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action.

(k) An owner or operator of an industrial establishment shall not implement a remedial action involving the remediation of groundwater or surface water without the prior review and approval by the department of a remedial action workplan.

(l) Submissions of a preliminary assessment, site investigation, remedial investigation, remedial action workplan, and the results of a remedial action shall be in a manner and form, and shall contain any relevant information relating to the remediation, as may be required by the department.

Upon receipt of a complete and accurate submission, the department shall review and approve or disapprove the submission in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (N.J.S.A. 13:1D-106). The owner or operator shall not

be required to wait for a response by the department before continuing remediation activities, except as otherwise provided in this section. Upon completion of the remediation, the plans for and results of the preliminary assessment, site investigation, remedial investigation, remedial action workplan, and remedial action and any other information required to be submitted as provided in section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12), that has not previously been submitted to the department, shall be submitted to the department for its review and approval.

The department shall review all information submitted to it by the owner or operator at the completion of the remediation to determine whether the actions taken were in compliance with rules and regulations of the department regarding remediation.

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12) if the remedial action that has occurred or that will occur is appropriate to meet the applicable remediation standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with the applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are migrating offsite, at levels or concentrations in violation of the applicable remediation standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in violation of the applicable remediation standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable remediation standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

5. Section 2 of P.L.1991, c.238 (N.J.S.A. 13:1K-9.2) is amended to read as follows:

**N.J.S.A. 13:1K-9.2 Owner, operator required to remediate industrial establishment.**

The acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to remediate the industrial establishment as required pursuant to P.L.1983, c.330.

6. Section 3 of P.L.1991, c.238 (N.J.S.A. 13:1K-9.3) is amended to read as follows:

**N.J.S.A. 13:1K-9.3 Remediation of industrial establishment by municipality, debt of immediate past owner or operator.**

If a municipality undertakes a remediation of an industrial establishment, the title to which the municipality acquired pursuant to a foreclosure action pertaining to a certificate of tax sale, all expenditures incurred in the remediation shall be a debt of the immediate past owner or operator of the industrial establishment. The debt shall constitute a lien on all property owned by the immediate past owner or operator when a notice of lien, incorporating a description of the property subject to the remediation and an identification of the amount of remediation and related costs expended by the municipality is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the immediate past owner or operator and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien shall attach to the revenues and all real and personal property of the immediate past owner or operator, whether or not he is insolvent. The notice of lien filed pursuant to this section which affects any property of an immediate past owner or operator shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

7. Section 5 of P.L.1991, c.238 (N.J.S.A. 13:1K-9.5) is amended to read as follows:

**N.J.S.A. 13:1K-9.5 Remediation by municipality approval.**

If a municipality undertakes a remediation of an industrial establishment, the municipality shall undertake that remediation and shall obtain all approvals required by the Department of Environmental Protection and Energy.

**N.J.S.A. 13:1K-9.6 Review, approval of remediation.**

Upon the submission of the complete and accurate results of a phase of the remediation pursuant to section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) or of any other document required to be submitted that requires the department's review and approval in order to comply with P.L.1983, c.330, the department shall review and approve, approve with conditions, or disapprove the submission or other documents in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (N.J.S.A. 13:1D-106).

**N.J.S.A. 13:1K-9.7 Transfer, close of operations without compliance; conditions.**

The owner or operator of an industrial establishment may, upon submission of a written notice to the department, transfer ownership or operations or close operations without complying with the provisions of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) if the total quantity of hazardous substances and hazardous wastes generated, manufactured, refined, transported, treated, stored, handled, or disposed of at the industrial establishment at any one time during the owner's or operator's period of ownership or operations:

- (a) does not exceed 500 pounds or 55 gallons;
- (b) if a hazardous substance or hazardous waste is mixed with nonhazardous substances, the total quantity in the mixture does not exceed 500 pounds or 55 gallons; or
- (c) if, in the aggregate, hydraulic or lubricating oil, does not exceed 220 gallons.

10. Section 5 of P.L.1983, c.330 (N.J.S.A. 13:1K-10) is amended to read as follows:  
**N.J.S.A. 13:1K-10 Rules, regulations; department access.**

(a) The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (N.J.S.A. 52:14B-1 et seq.), adopt rules and regulations establishing: (1) criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation shall not be identical to the criteria and standards used for similar documents submitted pursuant to federal law, except as may be required by federal law. In establishing criteria and minimum standards for these terms, the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards; (2) a fee schedule, as necessary, reflecting the actual costs associated with the review of plans for or results of negative declarations, preliminary assessments, site investigations, remedial investigations, and remedial actions, and review of the implementation thereof and for any other review or approval required by the department; (3) standards and procedures for remediation agreements authorized pursuant to subsection (e) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9); and (4) any other provisions or procedures necessary to implement this act.

(b) The owner or operator shall allow the department reasonable access to the industrial establishment and to offsite areas under the owner's or operator's control to inspect the premises, review records, and to take soil, groundwater, or other samples or measurements as deemed necessary by the department to verify the results of any submission made to the department and to verify the owner's or operator's compliance with the requirements of this act.

11. Section 6 of P.L.1983, c.330 (N.J.S.A. 13:1K-11) is amended to read as follows:

**N.J.S.A. 13:1K-11 Transfer of industrial establishment; deferral of remedial action workplan.**

(a) The owner or operator of an industrial establishment planning to transfer ownership or operations may apply to the department for a deferral of the preparation, approval, and implementation of a remedial action workplan for the industrial establishment. The applicant shall submit to the department:

(1) a certification signed by the purchaser, transferee, mortgagee or other party to the transfer, approved by the department, that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer;

(2) a certification, approved by the department, that the owner or operator has satisfactorily completed a preliminary assessment, site investigation, and remedial investigation of the industrial establishment;

(3) a cost estimate for the remedial action necessary at the industrial establishment, approved by the department based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with department regulations; and

(4) a certification, approved by the department, that the purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action.

The preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred for that transfer until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations.

(b) Upon submission of a complete and accurate application, the department shall approve the deferral. Upon approval of the deferral, the preparation, approval, and implementation of a remedial action workplan at the industrial establishment shall be deferred.

(c) The authority to defer the preparation, approval, and implementation of a remedial action workplan set forth in this section shall not be construed to limit, restrict, or prohibit the department from directing site remediation under any other statute, rule, or regulation, but shall be solely applicable to the obligations of the owner or operator of an industrial establishment, pursuant to the provisions of this act, nor shall any other provisions of this act be construed to limit, restrict, or prohibit the department from directing site remediation under any other statute, rule, or regulation.

For the purposes of this section, substantially the same use means that the industrial establishment shall retain the same three digit Industry Group Number, as designated in the Standard Industrial Classifications Manual prepared by the federal Office of Management and Budget in the Executive Office of the President of the United States. In a manner and form, and in accordance with the specific criteria prescribed by the department, an applicant may petition for a finding by the department that the affected industrial establishment be deemed subject to substantially the same use based upon its retention of the same two digit Major Group Number, as designated in the Standard Industrial Classifications Manual.

12. Section 8 of P.L.1983, c.330 (N.J.S.A. 13:1K-13) is amended to read as follows:

**N.J.S.A. 13:1K-13 Grounds for voiding sale; violations; penalties.**

(a) Failure of the transferor to perform a remediation and obtain department approval

thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting from the failure to implement the remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act.

(b) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than \$25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

#### **N.J.S.A. 13:1K-11.2 Application for expedited review.**

(a) The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations of an industrial establishment may, in lieu of complying with the provisions of subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), apply to the department for an expedited review. An application for an expedited review pursuant to this section shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9);

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. SS6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. SS9601 et seq., or any other law, has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment that are consistent with current regulations established by the department in order to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or remediation approval as described in paragraph (2) of this subsection, and, based on those remediation activities, that there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment subsequent to the approval of the negative declaration, the issuance of the no further action letter,



or the equivalent remediation; or, if any discharge has occurred, a certification listing any discharge, describing the action taken to remediate the discharge, a certification that the remediation was performed in accordance with procedures established by the department, a certification that the remediation was approved by the department and a copy of the document evidencing the departmental approval;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.), an approved method of secondary containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the most recent negative declaration, or no further action letter, or other approval, as applicable, approved by the department for the entire industrial establishment; and

(6) a proposed negative declaration.

(b) Upon the submission of a complete and accurate application and after an inspection, if necessary, the department shall approve or disapprove the negative declaration. The department shall approve the negative declaration upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the proposed negative declaration by the department pursuant to this section, the owner or operator shall comply with the provisions of section 4 of P.L.1983, c.330.

#### **N.J.S.A. 13:1K-11.3 Application for limited site review.**

(a) The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations of the industrial establishment may, in lieu of complying with the provisions of subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), apply to the department for a limited site review. An application for a limited site review pursuant to this section shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9);

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. '6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. '9601 et seq., or any other law, has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment that are consistent with current regulations established by the department in order to identify areas of concern and, based on those remediation activities, that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that

no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.), an approved method of secondary containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the most recent negative declaration, no further action letter, or other approval, as applicable, approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

(b) Upon the submission of a complete application, and after an inspection if necessary, the department may:

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation standards as established by the department; or

(2) require that the owner or operator perform a remediation as set forth in subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) only for those areas of concern identified by the information provided pursuant to paragraph (3) of subsection a. of this section upon a finding that further investigation or remediation is necessary to bring the industrial establishment into compliance with the applicable remediation standards.

(c) The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330.

#### **N.J.S.A. 13:1K-11.4 Application for area of concern waiver.**

(a) The owner or operator of an industrial establishment who is required to perform a remediation at an industrial establishment pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) may apply to the department for an area of concern waiver. Approval of the area of concern waiver shall relieve the owner or operator of the requirement to perform a remediation pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) for any area of concern at that industrial establishment for which a remediation has previously been conducted and approved by the department. An application pursuant to this subsection shall include:

(1) a certification that the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. '6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. '9601 et seq., or any other law, has previously approved a remediation at an area of concern and has issued a no further action letter or an equivalent approval of a remediation for that area of concern;

(2) a copy of the most recent no further action letter or equivalent approval for that

area of concern, approved by the department; and

(3) a certification that the owner or operator has performed remediation activities at that area of concern that are consistent with current regulations established by the department, and based on those remediation activities, that subsequent to the issuance of the no further action letter or equivalent approval described in paragraph (1) of this subsection, there has been no discharge of a hazardous substance or hazardous waste at that area of concern.

(b) Upon submission of a complete and accurate application and after an inspection, if necessary, the department shall approve the application for an area of concern waiver upon a finding that the information in the certifications submitted pursuant to subsection a. of this section is accurate. Upon a disapproval of the application by the department pursuant to this section, the owner or operator shall perform a remediation of the subject area of concern as may be required pursuant to subsection (b) of section 4 of P.L.1983, c.330.

**N.J.S.A. 13:1K-11.5 Application for closing, transfer when remediation is already in progress.**

(a) The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), if the industrial establishment is already in the process of a remediation pursuant to subsection (b) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9) or a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, including a cleanup being performed under the "Resource Conservation and Recovery Act," 42 U.S.C. SS6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. SS9601 et seq.. The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330;

(2) a certification that there has been no discharge of any hazardous substance or hazardous waste at the industrial establishment during the applicant's period of operation or ownership or that the remediation of any discharge of a hazardous substance or hazardous waste that occurred during the applicant's period of ownership or operation was approved by the department;

(3) a certification by the owner or operator that a remediation funding source for the cost of the remediation or the implementation of the remedial action workplan at the industrial establishment has been established as required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3); and

(4) a certification, as applicable, that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation.

(b) Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, that the applicant

may close operations or transfer ownership or operations of the industrial establishment.

**N.J.S.A. 13:1K-11.6 Application for closing, transfer when discharges are from regulated underground storage tank.**

(a) The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P. L. 1983, c.330 if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.). The application shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330;

(2) the submission of a preliminary assessment that shows that the only area of concern at an industrial establishment is an underground storage tank or tanks as defined pursuant to section 2 of P.L.1986, c.102 (N.J.S.A. 58:10A-22), or the submission of a site investigation that shows that the only discharged hazardous substances or hazardous wastes at the industrial establishment, or that has migrated offsite, above the applicable remediation standards are from a leak or discharge from that underground storage tank or tanks; and

(3) a certification that the owner or operator of the industrial establishment is in compliance with the provisions of P.L.1986, c.102 for all underground storage tanks at the industrial establishment that are covered by that act. The owner or operator of an industrial establishment, at which a discharge of a hazardous substance or hazardous waste from an underground storage tank has occurred, shall be deemed in compliance with the provisions of P.L.1986, c.102, as it relates to that discharge for the purposes of this paragraph, if the owner or operator has been issued an order by or has entered into an agreement with the department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

(b) Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall authorize, in writing, the applicant to close operations or transfer ownership or operations of the industrial establishment.

**N.J.S.A. 13:1K-11.7 Application for closing, transfer when discharges are of minimal environmental concern.**

(a) The owner or operator of an industrial establishment may apply to the department to close operations or transfer ownership or operations at an industrial establishment without obtaining departmental approval of a remedial action workplan or without the approval of a remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 if the discharge of hazardous substances or hazardous wastes at the industrial establishment is of minimal environmental concern. Upon the completion of a preliminary assessment, site investigation, and remedial investigation for the industrial establishment, conducted pursuant to

subsection (b) of section 4 of P.L.1983, c.330, any owner or operator may submit to the department an application for a determination that the discharge at an industrial establishment is of minimal environmental concern, which application shall include:

(1) a certification, supported by the submission of data from the preliminary assessment, site investigation, and remedial investigation, that there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards, and that remedial action at those areas of concern can be completed pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(2) a certification that a remedial action workplan shall be prepared pursuant to standards and criteria established by the department and that the remediation will meet either the nonresidential use or residential use soil remediation standards and the applicable surface water and groundwater remediation standards;

(3) a certification that the remedial action workplan will be prepared and implemented pursuant to standards and criteria established by the department within six months of the owner's or operator's receipt of the approval of the application by the department;

(4) evidence that the remediation funding source required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) has been established;

(5) the payment of all fees or surcharges related to the remediation imposed pursuant to P.L.1983, c.330, P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), and section 33 of P.L.1993, c.139 (N.J.S.A. 58:10B-11), and any rules or regulations adopted pursuant thereto; and

(6) documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose a threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge.

(b) Upon the submission of a complete application, and upon a finding that the information submitted is accurate, the department shall approve the application for a determination that the discharge at an industrial establishment is of minimal environmental concern. Prior to making a finding upon the application pursuant to this section, the department may inspect the industrial establishment, as necessary, to verify the information in the application.

The decision of the department shall be made within 30 days of the submission of a complete application. In determining the amount of time necessary to complete the remedial action, the department shall not include that time in which it takes the department to issue a permit for a discharge to surface water pursuant to P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.).

(c) The owner or operator shall, upon the completion of the remedial action at the subject areas of concern, certify to the department that the remedial action workplan has been implemented in accordance with the standards and criteria established by the department and in compliance with the certifications made pursuant to this section. The certification shall include a copy of the remedial action workplan and the results of all sampling analysis and any tests performed as part of the remedial action. Within 45 days of receipt of the certification, the department shall issue a no further action letter to the owner or operator. The department may

perform an inspection of the industrial establishment or any area offsite that is under the owner's or operator's control, as relevant, prior to issuing the no further action letter.

The department may refuse to issue the no further action letter pursuant to this section only upon a finding that hazardous substances or hazardous wastes remain at the relevant areas of concern at levels or concentrations in excess of the applicable remediation standards.

(d) Upon the failure of an owner or operator to complete the implementation of a remedial action workplan within the six month period as provided in subsection a. of this section, the owner or operator shall so notify the department in writing and provide the reasons therefor. The owner or operator shall have no more than 120 additional days to complete the implementation of the remedial action. If the implementation of the remedial action is not completed within this additional time, the department may rescind its determination that the industrial establishment is of minimal environmental concern and may require that a new remedial action workplan be submitted and implemented by the owner or operator in a manner and under the terms and conditions provided in its general regulations for remedial action workplan submissions and implementation.

#### **N.J.S.A. 13:1K-11.8 Application for certificate of limited conveyance.**

(a) The owner of an industrial establishment may transfer a portion of the real property on which an industrial establishment is situated without conducting a remediation of the entire industrial establishment pursuant to the provisions of P.L.1983, c.330, if, upon application by the owner, the department issues a certificate of limited conveyance pursuant to subsections (b) through (e) of this section, or if the owner transfers the portion of real property in accordance with the provisions of subsection (f) of this section.

(b) An application for a certificate of limited conveyance shall be in the form of a certification by the owner which shall include a description of the real property to be transferred, an appraisal of the real property to be transferred, the sale price or market value of the real property to be transferred, an appraisal of the entire industrial establishment, and an appraisal of the remaining property if the certificate of limited conveyance were issued, as well as any other information the department deems necessary to make the findings required in subsection (c) of this section.

(c) The department shall issue a certificate of limited conveyance for a portion of the real property on which an industrial establishment is situated after the submission of a complete and accurate application and upon a finding that the sales price or market value of the real property to be conveyed, together with any additional diminution in value to the remaining property as a result of the conveyance is not more than one third of the total appraised value of the industrial establishment prior to the transfer, and that the remaining real property is an industrial establishment subject to the provisions of P.L.1983, c.330. The appraisals shall be made no more than one year prior to the submission of application for a certificate of limited conveyance. Conveyances made pursuant to this section shall not exceed one third of the value of the industrial

establishment during the period of ownership of the applicant.

(d) Upon issuance of the certificate of limited conveyance, the owner or operator shall, prior to the conveyance, comply with the provisions of section 4 of P.L.1983, c.330 for that portion of the real property certified for conveyance. The remediation that may be required on the real property subject to the certificate of limited conveyance shall include any hazardous substances or hazardous wastes that are migrating from the remaining portion of the industrial establishment onto the real property being conveyed. The remaining portion of the industrial establishment, upon the subsequent closing of operations or transferring of ownership or operations, shall be subject to the provisions of P.L.1983, c.330 and P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.).

(e) A certificate of limited conveyance shall be valid for three years from the date of issuance.

(f) An owner, either as part of or subsequent to a conveyance made in accordance with subsections (b) through (e) of this section, may transfer additional portions of the real property of the industrial establishment in excess of the conveyance limitation set forth in subsection (c) of this section; provided, however, that the additional portions proposed for transfer do not constitute a closing of operations or transferring of ownership or operations, subject to section 4 of P.L.1983, c.330.

The amount paid for the additional portion of real property, or any part thereof, which exceeds the permissible conveyance limitation under subsection (c) of this section shall be used exclusively for the purposes of remediating that parcel of real property in accordance with the provisions of subsection (d) of this section; provided, however, if any portion of that amount shall remain unexpended for the remediation of the parcel, that unexpended amount shall be deposited in a remediation trust fund as provided in subsection g. of this section.

(g) To provide for the subsequent remediation of that portion of the real property of an industrial establishment which was not transferred pursuant to subsection (f) of this section, the owner shall establish a remediation trust fund in accordance with subsection (c) of section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) and shall deposit any unexpended amounts, as provided in subsection (f) of this section, into that fund.

#### **N.J.S.A. 13:1K-11.9 Responsibilities of owner as landlord, operator as tenant.**

(a) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

(b) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

(c) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The petition shall include a copy of the signed lease between the landlord and the tenant. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P. L. 1983, c. 330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

**N.J.S.A. 13:1K-11.10 Notification of transfer, avoidance of penalty.**

(a) Any person who, prior to the effective date of P.L.1993, c.139, violated the provisions of P.L.1983, c.330 by closing operations or transferring ownership or operations of an industrial establishment without receiving departmental approval of a cleanup plan or a negative declaration pursuant to the provisions of P.L.1983, c.330, or without entering into an administrative consent order that allows the closure of operations or transfer of ownership or operations, shall not be subject to a penalty for that violation if the person notifies the department of the closure of operations or of the transfer of ownership or operations of the industrial establishment, and, within one year of the effective date of P.L.1993, c.139, enters into an administrative consent order or a memorandum of agreement with the department to complete a remediation of the industrial establishment pursuant to the provisions of P.L.1983, c.330 and any rules or regulations adopted pursuant thereto.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who enters into a memorandum of agreement or an administrative consent order with the department pursuant to this section and fails to remediate the industrial establishment in accordance with the memorandum of agreement or administrative consent order shall be subject to penalties for violations that occurred before the effective date of P.L.1993, c.139 as well as any penalties for subsequent violations.

(c) Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of P.L.1993, c.139 as long as the person remediates the industrial establishment in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection (a) of this section.



**N.J.S.A. 13:1K-11.11 Audit of negative declarations and remedial action workplans.**

(a) Within one year of the effective date of P.L.1993, c.139, the Department of Environmental Protection and Energy shall conduct an audit of the negative declarations and remedial action workplans that have been submitted to the department pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.). On the basis of this audit, and any other information it may have available to it, the department shall adopt regulations identifying, within the Standard Industrial Classification major group numbers listed in the definition of "industrial establishment," all industries designated by Standard Industrial Classification number subgroups, or classes of operations within those subgroups, that should not pose a risk to public health and safety or to the environment. The audit shall, to the extent practicable, distinguish between hazardous substances or hazardous wastes at an industrial establishment caused by a particular type of industry and hazardous substances or hazardous wastes that exist as a result of activities at an industrial establishment unrelated to the activities of that industry.

(b) An industrial establishment for which a remedial action workplan was previously implemented and a no further action letter was received pursuant to P.L.1983, c.330, a negative declaration was previously approved by the department pursuant to P.L.1983, c.330, or for which the department has previously approved a remediation equivalent to that performed pursuant to the provisions of P.L.1983, c.330, and that is designated by a Standard Industrial Classification subgroup or class of operations that does not pose a risk to public health and safety or to the environment as identified in subsection (a) of this section, shall not be considered an industrial establishment for the purposes of P.L.1983, c.330.

## **N.J.S.A. 58:10B-1 Definitions.**

As used in sections 23 through 43 of P.L.1993, c.139 (N.J.S.A. 58:10B-1 et seq.):

**"Area of concern"** means any location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have or may have migrated;

**"Authority"** means the New jersey Economic Development Authority established pursuant to P.L.1974, c.80 (N.J.S.A. 34:1B-1 et seq.);

**"Contamination" or "contaminant"** means any discharged hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (N.J.S.A. 13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (N.J.S.A. 58:10A-3);

**"Department"** means the Department of Environmental Protection and Energy;

**"Discharge"** means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a contaminant onto the land or into the waters of the State;

**"Engineering controls"** means any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences and access controls;

**"Financial assistance"** means loans or loan guarantees;

**"Institutional controls"** means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of that property. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, and deed notices;

**"No further action letter"** means a written determination by the department that based upon an evaluation of the historical use of a particular site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

**"Preliminary assessment"** means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any contaminant is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of the public records;

**"Remedial action"** means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether of a permanent nature or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable remediation standards;

**"Remedial investigation"** means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

**"Remediation" or "remediate"** means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action;

**"Site investigation"** means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment;

**"Remedial action workplan"** means a plan for the remedial action to be undertaken at a site, or at any area to which a discharge originating at a site is migrating or has migrated; a description of the remedial action to be used to remediate a site; a time schedule and cost estimate of the implementation of the remedial action; and any other information the department deems necessary;

**"Remediation fund"** means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (N.J.S.A. 58:10B-4);

**"Remediation funding source"** means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3);

**"Remediation standards"** means the combination of numeric and narrative standards to which contaminants must be remediated for soil, groundwater, or surface water as provided by the department pursuant to section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12).

#### **N.J.S.A. 58:10B-2 Rules, regulations.**

The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (N.J.S.A. 52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be identical to the criteria and standards used for similar documents submitted pursuant to federal law, except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

#### **N.J.S.A. 58:10B-3 Establishment, maintenance of remediation funding source.**

(a) The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), or a discharger or person in any way responsible for a hazardous substance who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, is not required to establish or maintain a remediation funding source. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation (1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection (e) of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the

remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust, the environmental insurance policy, or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased by the requested amount.

(b) The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection (e) of section 4 of P.L.1983, c.330 (N.J.S.A. 13:1K-9), unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (4) a self-guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (N.J.S.A. 58:10B-7).

(c) A remediation trust fund shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the

remedial action workplan or remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The remediation trust fund agreement shall conform to a model trust fund agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New jersey agency.

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

(d) An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail, overnight delivery, or personal service within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection (e) of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable.

The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.

(e) A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the

department by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

(f) A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection (e) of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan

schedule to be performed in the 12 month period following the date on which the application for self-guarantee is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

(g)(1) If the person required to establish the remediation funding source fails to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit or claims upon the environmental insurance policy, as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (N.J.S.A. 58:10B-20).

(2) The transferee of property subject to a remediation conducted pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the remediation funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial establishment. The department, upon a determination that the transferee is competent to do so, may grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement, and to avail itself of the moneys in the remediation trust fund or line of credit or to make claims upon the environmental insurance policy for these purposes. The petition of the transferee shall not be granted by the department if the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

(3) After the department has begun to perform the remediation in the place of the person required to establish the remediation funding source or has granted the petition of the transferee to perform the remediation, the person required to establish the remediation funding source shall not be permitted by the department to continue its performance obligations except upon the agreement of the department or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.

#### **N.J.S.A. 58:10B-4 Hazardous Discharge Site Remediation Fund.**

(a) There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of financial assistance or grants to



municipal governmental entities, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

- (b) The remediation fund shall be credited with:
  - (1) moneys as are appropriated by the Legislature;
  - (2) moneys deposited into the fund as repayment of principal and interest on outstanding loans made from the fund;
  - (3) any return on investment of moneys deposited in the fund;
  - (4) remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.139 (N.J.S.A. 58:10B-11);
  - (5) moneys deposited into the fund from cost recovery subrogation actions; and
  - (6) moneys made available to the authority for the purposes of the fund.

**N.J.S.A. 58:10B-5 Financial assistance from remediation fund.**

(a)(1) Financial assistance from the remediation fund, made to persons other than municipal governmental entities or to persons who voluntarily undertake a remediation, may only be rendered to persons who cannot establish a remediation funding source for the full amount of a remediation. Financial assistance pursuant to this act may be rendered only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source.

(2) Financial assistance rendered to persons who voluntarily undertake a remediation may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

(b) Financial assistance may be rendered from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), and (3) persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste and who have not been ordered or directed to perform the remediation by the department or by a court.

(c) Financial assistance and grants may be made from the remediation fund to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

(d) Grants may be made from the remediation fund to persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to

section 28 of P.L.1993, c.139 (C. 58: 10B-6).

**N.J.S.A. 58:10B-6 Financial assistance and grants from the fund; allocations.**

(a) Except for moneys deposited in the remediation fund for specific purposes, financial assistance and grants from the remediation fund shall be rendered for the following purposes and, on an annual basis, obligated in the percentages as provided in this subsection. Upon a written joint determination by the authority and the department that it is in the public interest, financial assistance and grants dedicated for the purposes and in the percentages set forth in paragraph (1), (2), or (3) of this subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee, and the Assembly Energy and Hazardous Waste Committee, or their successors.

(1) At least 15% of the moneys shall be allocated for financial assistance to persons, other than governmental entities, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) At least 10% of the moneys shall be allocated for financial assistance and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on property may obtain a loan for the purpose of continuing the remediation on those properties it owns as necessary to comply with the applicable remediation standards adopted by the department;

(3) At least 15% of the moneys shall be allocated for financial assistance to persons or municipal governmental entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

(4) At least 10% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the department or by a court;

(5) At least 20% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), as a condition of the closure, transfer, or termination of operations at that industrial establishment;

(6) At least 20% of the moneys shall be allocated for grants to persons, other than municipal governmental entities, who own real property on which there has been a discharge of a

hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed \$1,000,000; and

(7) Ten percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraphs (1) through (6) of this subsection, except that where moneys in the fund are insufficient to fund all the applications in any calendar year that would otherwise qualify for financial assistance or a grant pursuant to this paragraph, the authority shall give priority to financial assistance applications that meet the criteria enumerated in paragraph (3) of this subsection.

(b) Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Loans shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, except that the rate shall be no lower than five percent. Financial assistance and grants may be issued for up to 100% of the estimated applicable remediation cost, except that the cumulative maximum amount of financial assistance which may be issued to a person other than a governmental entity in any calendar year, for one or more properties, shall be \$1,000,000. Financial assistance and grants to any one municipal governmental entity may not exceed \$2,000,000 in any calendar year. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

(c) No person, other than a municipal governmental entity, or a person engaging in a voluntary remediation, shall be eligible for financial assistance from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3).

(d) The authority may use a sum that represents up to 2% of the moneys issued as financial assistance or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of financial assistance and grants.

(e) Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors, a report detailing the amount of money that was available for financial assistance and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for financial assistance and grants for the current calendar year, the amount of

financial assistance and grants issued for the previous calendar year and the category for which each financial assistance and grant was rendered, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote the redevelopment and use of existing industrial sites.

**N.J.S.A. 58:10B-7 Awarding of financial assistance, grants, priorities.**

(a) A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant. Priority for awarding financial assistance and grants from the remediation fund shall be based upon the date of receipt by the authority of a complete application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

(b) Within 90 days, for a private entity, or 180 days for a municipal governmental entity, of notice of approval of a financial assistance or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the financial assistance or grant application was made. The contract shall be consistent with the terms and conditions for which the financial assistance or grant was rendered. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of financial assistance or a grant.

**N.J.S.A. 58:10B-8 Financial assistance, grant recipients, compliance, conditions.**

- (a) The authority shall, by rule or regulation:
- (1) require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;
  - (2) require the financial assistance or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant;
  - (3) establish a priority system for rendering financial assistance or grants for remediations identified by the department as involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (7) of subsection (a) of section 28 of P.L.1993, c.139 (N.J.S.A. 58:10B-6);

(4) provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other responsible party. All moneys collected in a cost recovery subrogation action shall be deposited into the remediation fund;

(5) provide that an applicant for financial assistance or a grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

(6) provide that where financial assistance to a person other than a municipal governmental entity, is for a portion of the remediation cost, that the proceeds thereof not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

(7) adopt such other requirements as the authority shall deem necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

(b) An applicant for financial assistance or a grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3). The provisions of this paragraph do not apply to grants to innocent persons or to financial assistance or grants to municipal governmental entities; and

(2) demonstrate the ability to repay the amount of the financial assistance and interest, and, if necessary, to provide adequate collateral to secure the financial assistance amount.

(c) Information submitted as part of a loan or grant application or agreement shall be deemed a public record subject to the provisions of P.L.19 c.73 (C.47:1A-1 et seq.).

(d) In establishing requirements for financial assistance or grant applications and financial assistance or grant agreements, the authority:

(1) shall minimize the complexity and costs to applicants or recipients of complying with such requirements;

(2) may not require financial assistance or grant conditions that interfere with the everyday normal operations of the recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the financial assistance and to preserve the value of the loan collateral; and

(3) shall expeditiously process all financial assistance or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a financial assistance or grant application.

**N.J.S.A. 58:10B-9 Violators of environmental law may not receive financial assistance, grant.**

No financial assistance or grant from the remediation fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment, or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the person in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform required remediation activities.

**N.J.S.A. 58:10B-10 Legal responsibility of applicant for compliance.**

(a) The lack of sufficient moneys in the remediation fund to satisfy all financial assistance or grant applications shall not affect in any way an applicant's legal responsibility to comply with the requirements of P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), or any other applicable provision of law.

(b) Nothing in sections 23 through 43 of P.L.1993, c.139 (N.J.S.A. 58:10B-1 et seq.) shall be construed to:

(1) impose any obligation on the State for any financial assistance or grant commitments rendered by the authority, and the authority's obligations shall be limited to the amount of otherwise unobligated moneys available in the fund therefor; or

(2) impose any obligation on the authority for the quality of any work performed pursuant to a remediation undertaken with financial assistance or a grant rendered pursuant to section 28 of P.L.1993, c.139 (N.J.S.A. 58:10B-6).

**N.J.S.A. 58:10B-11 Remediation funding source surcharge.**

(a) There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection (f) of section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3), (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund, (3) any person who voluntarily undertakes a remediation without being so ordered or directed by the department or by a court or pursuant to an administrative consent order, or (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection and Energy issues a no further action letter for the property subject to

the remediation. The remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

(b) By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, listing, for the prior calendar year, each person who owed the remediation funding source surcharge, the amount of the surcharge paid, and the total amount collected.

(c) There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to the "Hazardous Discharge Bond Act of 1986," P.L.1986, c-113, the sum of \$45,000,000 to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L.1993, c.139 (N.J.S.A. 58:10B-4) for the purposes of issuing financial assistance and grants for the investigation of property suspected of being contaminated by a hazardous substance or hazardous waste or for the remediation of property contaminated by a hazardous substance or hazardous waste.

(d) There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, the sum of \$5,000,000 to the Department of Environmental Protection and Energy for deposit into the Remediation Guarantee Fund, created pursuant to section 45 of P.L.1993, c.139 (N.J.S.A. 58:10B-20), for the purposes of that fund.

#### **N.J.S.A. 58:10B-12 Adoption of minimum remediation standards.**

(a) The Department of Environmental Protection and Energy shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, the surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

Until the minimum remediation standards for the protection of public health and safety as described herein are adopted, the department shall apply public health and safety remediation standards for contamination at a site on a case-by-case basis based upon the considerations and criteria enumerated in this section.

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section

37 of P.L.1993, c.139. Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. SS9601 et seq. and other statutory authorities as applicable.

(b) In developing minimum remediation standards the department shall:

(1) base the standards on generally accepted and peer reviewed scientific evidence or methodologies;

(2) base the standards upon reasonable assumptions of exposure scenarios as to amounts of contaminants to which humans or other receptors will be exposed, when and where those exposures will occur, and the amount of that exposure;

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which guidelines make use of the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. '9601 et seq. and other statutory authorities as applicable; and

(4) where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or concentrations for particular contaminants.

(c)(1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and transportable to groundwater, the residential and nonresidential soil remediation standards shall be protective of groundwater and surface water. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without exceeding a health risk level greater than that provided in subsection (d) of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L.1993, c.139 (N.J.S.A. 58:10B-13), that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

(2) The department may develop differential remediation standards for surface water or groundwater that take into account the current, planned, or potential use of that water in accordance with the "Clean Water Act" (33 U.S.C. SS1251 et seq.) and the "Water Pollution Control Act," P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.).



(d) In developing minimum remediation standards intended to be protective of public health and safety, the department shall identify the hazards posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation standards for both residential and nonresidential uses that:

(1) for human carcinogens, as categorized by the United States Environmental Protection Agency, will result in an additional cancer risk of one in one million;

(2) for noncarcinogens, will limit the Hazard Index for any given effect to a value not exceeding one.

The health risk levels established in this subsection are for any particular contaminant and not for the cumulative effects of more than one contaminant at a site.

(e) Remediation standards and other requirements established pursuant to this section shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.), P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (N.J.S.A. 13:IE-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (N.J.S.A. 13:IE-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (N.J.S.A. 13:IE-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (N.J.S.A. 13:IE-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (N.J.S.A. 13:IE-177 et seq.), or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.), or to require the complete removal of nonhazardous solid waste pursuant to law.

(f)(1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department pursuant to subsection (c) of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental

Response, Compensation, and Liability Act of 1980," 42 U.S.C. SS9601 et seq. and other statutory authorities as applicable. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, and available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies.

Upon a determination by the department that the requested alternative remediation standard is protective of public health and safety, as established in subsection (d) of this section, and protective of the environment pursuant to subsection (a) of this section, the alternative residential use or nonresidential use soil remediation standard shall be approved by the department.

(2) The department may, upon its own initiative, require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective of public health or safety or of the environment, as appropriate.

(g) The development, selection, and implementation of any remediation standard or remedial action shall ensure that it is protective of public health, safety, and the environment, as applicable, as provided in this section. In determining the appropriate remedial action that shall occur at a site in order to meet the established remediation standards, the department, or any person performing the remediation, shall base its decision on the following factors:

(1) Permanent and nonpermanent remedies shall be allowed except that permanent remedies shall be preferred over nonpermanent remedies for remedial actions;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use or nonresidential use if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the risk level established in subsection (d) of this section and if the requirements established in subsections (a), (b), (c) and (d) of section 36 of P.L.1993, c.139 (N.J.S.A. 58:10B-13) are met;

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk level by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is clearly demonstrated that for all areas of the real property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk level as established in subsection (d) of this section;

(4) Remediation shall not be required beyond the regional natural background levels for any particular contaminant. The department shall develop regulations that set forth a process

to identify background levels of contaminants for a particular region. For the purpose of this paragraph "regional natural background levels" means the concentration of a contaminant consistently present in the environment of the region of the site and which has not been influenced by localized human activities;

(5) Remediation shall not be required of the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person, unless the owner or operator is in any way responsible for the discharge;

(6) Groundwater that is contaminated shall not be required to be remediated to a level or concentration for any particular contaminant lower than the level or concentration that is migrating onto the property from another property owned and operated by another person;

(7) The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk levels. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment;

(8) In the case of a proposed remedial action that will not meet the established minimum residential use soil remediation standards, the cost of all available permanent remedies is unreasonable, as determined by department rules designed to provide a cost-based preference for the use of permanent remedies. The department shall adopt regulations, no later than 18 months after the effective date of this act, establishing criteria and procedures for allowing a person to demonstrate that the cost of all available permanent remedies is unreasonable. Until the department adopts those regulations, it shall not require a person performing a remedial action to implement a permanent remedy, unless the cost of implementing a nonpermanent remedy is 50 percent or more than the cost of implementing a permanent remedy; provided, however, that the preceding provision shall not apply to any owner or operator of an industrial establishment who is implementing a remedial action pursuant to subsection i. of section 4 of P.L.1983, c.330;

(9) The use of the established nonresidential soil remediation standard shall not be unreasonably disapproved by the department.

The department may require the person performing the remediation to supply the information required pursuant to this subsection as is necessary for the department to make a determination.

(h)(1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with a remediation standard. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk levels as established in subsection (d) of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be

effective in protecting public health, safety, and the environment. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk levels established in subsection (d) of this section, and to be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department, within one year of the enactment of this act, shall issue a report to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L.1993, c.139 (N.J.S.A. 58:10B-13), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

(i) The department may not require a remedial action workplan to be prepared or implemented or engineering or institutional controls to be imposed upon any real property unless sampling performed at that real property demonstrates the existence of contamination above the applicable remediation standards.

(j) Upon the approval by the department of a remedial action workplan, or similar plan that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other plan differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar plan pursuant to this subsection shall only apply if the workplan or similar plan is being implemented in a reasonable timeframe, as may be indicated in the approved remedial action workplan or similar plan.

(k) Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the Pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C-13:18A-1 et seq.), any rules and regulations promulgated pursuant thereto, and with section 502 of the National Parks and

Recreation Act of 1978, 16 U.S.C. ' 4711.

(l) Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk levels established in subsection (d) of section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk level more protective than that provided for in subsection (d) of section 35 of P.L.1993, c.139 (N.J.S.A. 58:10B-12).

(m) Nothing in P.L.1993, c.139 shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.).

**N.J.S.A. 58:10B-13 Use of nonresidential standards or other controls, requirements.**

(a) When real property is remediated to a nonresidential soil remediation standard or engineering or institutional controls are used in lieu of remediating a site to meet an established remediation standard for soil, groundwater, or surface water, the department shall, as a condition of the use of that standard or control measure:

(1) require the establishment of any engineering or institutional controls the department determines are reasonably necessary to prevent exposure to the contaminants, require maintenance, as necessary, of those controls, and require the restriction of the use of the property in a manner that prevents exposure;

(2) require, with the consent of the owner of the real property, the recording with the office of the county recording officer, in the county in which the property is located, a notice to inform prospective holders of an interest in the property that contamination exists on the property at a level that may statutorily restrict certain uses of or access to all or part of that property, a delineation of those restrictions, a description of all specific engineering or institutional controls at the property that exist and that shall be maintained in order to prevent exposure to contaminants remaining on the property, and the written consent to the notice by the owner of the property;

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site;

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials; and

(6) require a person, prior to commencing a remedial action, to notify the governing

body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action.

(b) If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection (a) of this section, the department shall require the use of a residential soil remediation standard in the remediation of that real property.

(c) Whenever engineering or institutional controls on property as provided in subsection (a) of this section are no longer required, or whenever the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall require that the owner or operator of that property record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

(d) The owner or lessee of any real property, or any person operating a business on real property, which has been remediated to a nonresidential use soil remediation standard or on which the department has allowed engineering or institutional controls for soil, groundwater, or surface water to protect the public health, safety, or the environment, as applicable, shall maintain the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11u). The provisions of this subsection shall not apply if a notification received pursuant to subsection (b) of this section authorizes all restrictions or controls to be removed from the subject property.

(e) Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, groundwater, or surface water remediation standards that were in effect at the completion of the remediation, the owner or operator of the property or person performing the remediation, except as otherwise provided in this section, shall not be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, only a person who is liable to clean up and remove that contamination pursuant to section 8 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11g) shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs

by an order of magnitude.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection (f) of this section, to require additional remediation on real property where engineering or institutional controls were implemented.

Nothing in the provisions of this subsection shall limit the rights of a person, other than the State, or any department or agency thereof, to bring a civil action for damages, contribution, or indemnification as provided by statutory or common law.

(f) Whenever the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment in lieu of remediating a site to a condition that meets an established residential remediation standard, the department shall not require additional remediation of that site unless the engineering or institutional controls no longer are protective of public health, safety, or the environment.

### **Environmental Advisory Task Force**

(a) There is established, in but not of the Department of Environmental Protection and Energy, an Environment Advisory Task Force. The Task Force shall consist of 15 members as follows: (1) the Commissioner of Environmental Protection and Energy, or his designee; (2) one representative from the National Academy of Sciences who shall be selected by the Academy; (3) one representative from the New jersey Environmental and Occupational Health Sciences Institute who has experience in risk assessment, who shall be selected by the Institute; (4) one representative each from the industrial real estate development industry, the environmental consulting profession, a public interest environmental organization, and the legal community, who shall be appointed by the Governor with the advice and consent of the Senate; (5) four members who shall have at least a master's degree in a relevant science discipline and who shall, to the greatest extent possible, include a plant or animal biologist, a toxicologist, an omithologist, and a physiologist, who shall be appointed by the Governor with the advice and consent of the Senate; (6) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the President of the Senate; and (7) two members who shall have at least a master's degree in a science discipline, have relevant experience, and be employed by an industrial business, who shall be appointed by the Speaker of the General Assembly.

(b) The Environment Advisory Task Force shall meet as soon as practicable after the appointment and qualification of all its members. The Commissioner of Environmental Protection and Energy, or the commissioner's designee, shall be the chairperson of the Environment Advisory Task Force. The Environment Advisory Task Force shall meet at the call of its chairperson and in the locations the chairperson shall choose.

(c) The Environment Advisory Task Force shall, within two years after its first meeting, make recommendations to the department on the feasibility, development, and

application of remediation standards protective of the environment. A copy of the recommendations shall be submitted to the Senate Environment Committee and to the Assembly Energy and Hazardous Waste Committee, or to their successors.

(d) The Environment Advisory Task Force shall:

(1) review the scientific literature to identify existing sources of information and data necessary for the development of remediation standards protective of the environment and to determine the current state-of-the-science in the identification of adverse impacts of contamination on ecological receptors and the establishment of contaminant concentration levels necessary to protect the environment;

(2) review scientific literature on the methods, procedures, data input needs, limitations, interpretation, and uses of environment risk assessments;

(3) collect information on public and private activities concerning the development and uses of environment risk assessments and remediation standards protective of the environment;

(4) evaluate the ecological components which should be protected through the application of remediation standards protective of the environment;

(5) identify public policy issues involved in the development of remediation standards protective of the environment;

(6) suggest an approach and methodology for the development of remediation standards protective of the environment;

(7) evaluate the social, economic and environmental impacts of regulations which would incorporate state-of-the-art environment risk assessment methodologies;

(8) recommend necessary changes in statutes and regulations necessary to implement the advice of the Environment Advisory Task Force; and

(9) review and make recommendations on any other aspect of the adoption of these remediation standards the task force determines is necessary for a complete evaluation of these issues.

(e) Prior to the submittal of its recommendations to the department, the Environment Advisory Task Force shall release a proposed recommendation to the public. The Environment Advisory Task Force shall hold at least one public meeting at least 14 days after public release of its proposed recommendations. Members of the public shall be allowed to present written and oral comments on the proposed recommendations at the public meeting. The task force is not required to record, consider, or comment upon the public comments. Upon submittal of its final recommendations to the department concerning the adoption of remediation standards protective of the environment, the Environment Advisory Task Force shall expire.

#### **N.J.S.A. 58:10B-14 Development of guidance document.**

Within 12 months of the effective date of this act, the department shall develop a guidance document for the remediation of contaminated soils. The guidance document shall include a description of remedial actions the department determines are effective in remediating soil



contamination to the residential or nonresidential use soil remediation standards and that should be considered by a person performing a soil remediation. The department shall revise the guidance document periodically as it determines necessary. Adoption of the guidance document, or the revisions thereto, shall be published in the New jersey Register but the adoption of the guidance document, or the revisions thereto, shall not otherwise be subject to the notice, comment, publication, or other requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

**N.J.S.A. 58:10B-15 Responsibility for prior discharges, exemptions; penalties.**

(a) Any person who, before the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), has discharged a hazardous substance in violation of P.L.1976, c.141, and:

(1) has not been issued a directive to remove or arrange for the removal of the discharge pursuant to section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11f);

(2) has not been assessed a civil penalty, a civil administrative penalty, or is not the subject of an action pursuant to the provisions of section 22 of P. L. 1976, c.141 (N.J.S.A. 58:10-23.11u);

(3) has not entered into an administrative consent order to clean up and remove the discharge; and

(4) has not been ordered by a court to clean up and remove the discharge, shall not be subject to a monetary penalty for the failure to report the discharge or for any civil violation of P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.) or P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.) that resulted in the discharge if the person notifies the department of the discharge and enters into an administrative consent order or a memorandum of agreement with the department to remediate the discharge in accordance with the provisions of P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), or any rules or regulations adopted pursuant thereto, within one year of the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.). Any person who notifies the department of the discharge pursuant to this section shall be liable for all cleanup and removal costs as provided in section 8 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11g).

(b) Notwithstanding the provisions of subsection (a) of this subsection, any person who enters into a memorandum of agreement or administrative consent order pursuant to this section and fails to remediate the discharge in accordance with the memorandum of agreement or administrative consent order, shall be subject to all penalties for violations that occurred before the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.) as well as any penalties for subsequent violations.

(c) The provisions of this section shall not apply to violations of a permit issued pursuant to P.L.1977, c.74 (N.J.S.A. 58:10A-1 et seq.).

(d) Any documents or information provided to the department pursuant to this section may not be used in a criminal investigation or criminal prosecution against the person providing the information or documents for those violations that occurred before the effective date of this act as long as the person remediates the discharge in conformance with the administrative consent order or memorandum of agreement entered into pursuant to subsection (a) of this section.

**N.J.S.A. 58:10B-16 Access to property to conduct remediation.**

(a)(1) Any person who undertakes the remediation of suspected or actual contamination and who requires access to conduct such remediation on real or personal property that is not owned by that person, may enter upon the property to conduct the necessary remediation if there is an agreement, in writing, between the person conducting the remediation and the owner of the property authorizing the entry onto the property. If, after good faith efforts, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed **iii** the action in a summary manner.

(2) Such relief may include, singly or in combination:

(a) A temporary or permanent injunction;

(b) Assessment of the person undertaking the remediation for costs associated with any disruption in operations on the property;

(c) Assessment of the person undertaking the remediation for any costs to return the property to its condition before the commencement of the remediation;

(d) A requirement that the person undertaking the remediation indemnify the owner of the property for any damages, penalties or liabilities resulting from the remediation;

(e) A requirement that the person undertaking the remediation indemnify the owner of the property for any liability resulting from the entry of persons onto the property to perform the remediation.

(b) The court shall promptly issue any access order sought pursuant to this section upon a showing that (1) a reasonable possibility exists that contamination from another site has migrated onto the owner's property, or (2) access to the property is reasonable and necessary to remediate contamination. The presence of an applicable department oversight document or a remediation obligation pursuant to law involving the property for which access is sought shall constitute prima facie evidence sufficient to support the issuance of an order.

Unless the court otherwise orders for notice and for good cause shown, an action for an access order shall not be joined with non-germane issues against the owner of the property for which access is sought or other person who may be liable for the contamination. Non-germane issues shall include, but not be limited to, issues concerning contribution, treble damages, or other damages involving either the contamination or the remediation.

The court may impose reasonable conditions as part of the access order, including without limitation, that the person undertaking the remediation take all reasonable measures to minimize the disruption to the property and the activities conducted there and return the property to its condition prior to the commencement of remediation.

(c) The department may not impose or seek to impose any civil or civil administrative penalties upon any person for failure to perform a remediation on property not owned by that person within the time schedule required by regulation on property not owned by that person if (1)

the failure to perform the remediation was the result of an inability of that person to enter upon real or personal property owned by another person, and (2) the person took all appropriate action pursuant to this section to obtain access to the property.

(d) Nothing herein shall be construed as limiting the rights of the owner of the property against which the access order is issued to initiate a civil action to seek any damages available under law.

(e) Nothing herein shall be construed as limiting the rights of the person conducting the remediation from initiating any subsequent civil action against the owner of the property upon which access was ordered.

#### **N.J.S.A. 58:10B-17 Review of department decision concerning remediation.**

(a) Any person conducting a remediation of a contaminated site may dispute a decision by the department concerning the remediation in accordance with the guidelines developed pursuant to subsection (b) of this section. The disputed decision shall be reviewed, and a determination shall be made, by the next level of the department's management, and the review may continue, upon the request of the person seeking review, until the commissioner or his designee has issued a decision on the dispute. Each successive level of management review and the resulting determination on the dispute, shall occur within seven days of the department's receipt of the request for review.

(b) Within 60 days of the effective date of P.L.1993, c.139, the department shall develop guidelines that establish a procedure through which a person conducting a remediation of a contaminated site may dispute a department decision concerning the remediation. Those guidelines shall include provisions for an expedited review procedure under which the commissioner, or his designee, shall issue a decision on the dispute within 21 calendar days of the date on which the request for that review was received.

#### **N.J.S.A. 58: 10B-18 Preparation, distribution of informational materials.**

The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Department of Environmental Protection and Energy, shall prepare, and the department shall distribute, for the cost of reproduction and postage, to any interested person, informational materials that set forth criteria that may be used to evaluate the qualifications of environmental consultants, environmental consulting firms, engineers, geologists or any other consultant, whose expertise or training may be required by a person to comply with the provisions of P.L.1986, c.102 (N.J.S.A. 58:10A-21 et seq.), P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.), P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), and P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.) relating to the remediation of contaminated real property. The materials may describe the expertise or training necessary to address specific types of environmental cleanups, sites or contamination, the significance and availability of various types of professional liability insurance,

issued by an entity licensed by the Department of Insurance to transact business in the State of New Jersey, the average cost of services and tests commonly performed by consultants, the significance of available accreditation or certifications, the ethics code applicable to any consultant, the references that may be requested and any other relevant factor that may be used to evaluate the qualifications and expertise of persons performing remediation services.

**N.J.S.A. 58:10B-19 Implementation of interim response action.**

The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection (a) of section 4 of P. L. 1983, c.330 (N.J.S.A. 13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.), or any person who has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation standards.

The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a fee schedule, as necessary, reflecting the actual costs associated with the review of the interim response action and any implementation thereof.

44. Section 8 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11g) is amended to read as follows:

**N.J.S.A. 58:10-23.11g Liability for cleanup and removal costs.**

(a) The fund shall be strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained, including but not limited to:

(1) The cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time

such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto;

(2) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

(3) Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge; provided that such loss or impairment exceeds 10% of the amount which claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

(4) Loss of tax revenue by the State or local governments for a period of one year due to damage to real or personal property proximately resulting from a discharge;

(5) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this act.

(b) The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection (d) of this section against the owner or operator of a major facility or vessel, shall not exceed \$50,000,000.00 for each major facility or \$150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

(c)(1) Any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection (b) of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.1lf).

(2) In addition to the persons liable pursuant to paragraph (1) of this subsection, in the case of a discharge of a hazardous substance from a vessel into the waters of the State, the owner or operator of a refinery, storage, transfer, or pipeline facility to which the vessel was en route to deliver the hazardous substance who, by contract, agreement, or otherwise, was scheduled to assume ownership of the discharged hazardous substance, and any other person who was so scheduled to assume ownership of the discharged hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs if the owner or operator of the vessel did not have the evidence of financial responsibility required pursuant to section 2 of P.L.1991, c.58 (N.J.S.A. 58:10-23.1lg2).

Where a person is liable for cleanup and removal costs as provided in this paragraph, any

expenditures made by the administrator for that cleanup and removal shall constitute a debt of that person to the fund. The debt shall constitute a lien on all property owned by that person when a notice of lien identifying the nature of the discharge and the amount of the cleanup, removal and related costs expended from the fund is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the liable person and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the liable person, whether or not that person is insolvent.

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance was en route shall have priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to this paragraph which affects any property of a person liable pursuant to this paragraph other than the property of an owner or operator of a refinery, storage, transfer, or pipeline facility to which the discharged hazardous substance was en route, shall have priority from the day of the filing of the notice of the lien over all claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with

established procedure prior to the filing of a notice of lien pursuant to this paragraph.

To the extent that a person liable pursuant to this paragraph is not otherwise liable pursuant to paragraph (1) of this subsection, or under any other provision of law or under common law, that person may bring an action for indemnification for costs paid pursuant to this paragraph against any other person who is strictly liable pursuant to paragraph (1) of this subsection.

Nothing in this paragraph shall be construed to extend or negate the right of any person to bring an action for contribution that may exist under P.L.1976, c.141, or any other act or under common law.

(d)(1) In addition to those defenses provided in this subsection, an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(2) A person, including an owner or operator of a major facility, who owns real property acquired after the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.), on which there has been a discharge, shall be considered a person in any way responsible for the discharged hazardous substance pursuant to subsection (c) of this section, unless that person can establish by a preponderance of the evidence that all of the following apply:

(a) the person acquired the real property after the discharge of that hazardous substance at the real property;

(b)(i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a

hazardous substance or was in any way responsible for a hazardous substance, shall be made available to satisfy the requirements of P.L.1976, c.141;

(c) the person did not discharge the hazardous substance and is not in any way responsible for the hazardous substance; and

(d) the person gave notice of the discharge to the department upon actual discovery of that discharge.

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation (if the preliminary assessment indicates that a site investigation is necessary), as defined in section 23 of P.L.1993, c.139 (N.J.S.A. 58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to the effective date of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.).

(3) Notwithstanding the provisions of paragraph (2) of this subsection to the contrary, if a person who owns real property obtains actual knowledge of a discharge of a hazardous substance at the real property during the period of that person's ownership and subsequently transfers ownership of the property to another person without disclosing that knowledge, the transferor shall be strictly liable for the cleanup and removal costs of the discharge and no defense under this subsection shall be available to that person.

(4) Any federal, State, or local governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the government involuntarily acquires title by virtue of its function as sovereign, shall not be liable for the cleanup and removal costs of any discharge which occurred or began prior to that ownership. This paragraph shall not apply to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance.

#### **N.J.S.A. 58:10B-20 Remediation Guarantee Fund.**

(a) There is created in the Department of Environmental Protection and Energy a special, revolving fund to be known as the Remediation Guarantee Fund. The fund shall be credited with all moneys appropriated to it by law, all moneys collected in subrogation actions to recover moneys expended from the fund, and all moneys earned from the investment of the moneys in the fund.

(b) The Commissioner of Environmental Protection and Energy shall appoint and supervise an administrator of the fund. The administrator shall be the chief executive of the fund, shall approve all disbursements of moneys from the fund and, and shall ensure the proper deposit of all moneys authorized to be deposited into the fund.

(c) Moneys in the fund shall be used by the Department of Environmental Protection

and Energy to remediate, or contract for the remediation of, any real property for which a person was required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (N.J.S.A. 58:10B-3) and where that person fails to conduct or properly conduct that remediation.

(d) Any moneys expended by the department from the fund pursuant to this section shall constitute a debt of the person required to establish the remediation funding source and against the discharger. The debt shall constitute a lien on all property owned by the person required to establish the remediation funding source and against the discharger to the same extent and in the same manner as provided for liens in subsection (f) of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.1lf).

(e) Whenever the department expends moneys from the fund for a remediation, it shall have a cause of action to recover from the person required to establish the remediation funding source or from any other person liable for the discharge pursuant to section 8 of P.L.1976, c.141 (N.J.S.A. 58:10-23.1lg) triple the amount of moneys expended for the remediation.

(f) Moneys in the fund may be appropriated to pay for the costs to administer the fund except that those appropriations may not exceed the amount of moneys deposited into the fund earned from the investment of moneys in the fund.

46. Section 7 of P.L.1993, c.112 (N.J.S.A. 13:1K-11.1) is amended to read as follows:

**N.J.S.A. 13:1K-11.1 Obligations of trust, estate to remove discharge.**

In the event of the closing, termination or transfer of an industrial establishment, which industrial establishment is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate shall be subject to the obligation to remove the discharge as set forth in P.L.1983, c.330 (N.J.S.A. 13:1K-6 et al.).

**Environmental Risk Assessment and Management Study Commission**

(a) There is created a special Environmental Risk Assessment and Risk Management Study Commission. The commission shall consist of 10 members and shall include the Commissioner of Environmental Protection and Energy, or his designee, as a non-voting member, and eight members who shall have advanced degrees and relevant experience in any of the following disciplines: (1) environmental medicine, health, or epidemiology; (2) environmental toxicology; (3) soil science, geology, or hydrogeology, and (4) environmental engineering with experience in site remediation. The Governor shall appoint one representative from each of those disciplines; the Senate President shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline; and the Speaker of the General Assembly shall appoint two representatives, provided, however, both of those appointees shall not be from the same discipline. A ninth member, who shall be a recognized expert in the field of risk



assessment as it applies to contaminated sites or to the remediation of such sites, shall be jointly appointed by the Governor, Senate President, and the Speaker. The chairman of the commission shall be jointly appointed by the Governor, Senate President, and Speaker from among the appointed members. All members shall serve without compensation. Vacancies in the membership shall be filled in the same manner as the original appointments were made.

(b) It shall be the duty of the commission:

(1) To examine and assess the scientific basis for selecting the risk management standard of one in one million for the purposes of P.L.1993, c.139 (N.J.S.A. 13:1K-9.6 et al.) and to consider and assess alternative scientific standards and criteria for that purpose; and

(2) To examine and assess methodologies of risk assessment and their efficacy and applicability for the purposes of establishing remediation standards.

(c) The commission shall organize as soon after the appointment of its members as is practicable.

(d) The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it.

(e) The commission may meet and hold hearings at such place or places as it shall designate. The commission shall hold at least one public hearing to accept written and oral testimony from the public prior to commencing its deliberations. The commission shall hold at least one other public hearing prior to formally submitting its findings and recommendations to the Governor and the Legislature. This public hearing, or hearings, as the case may be, shall be held at least 14 days after the commission has made public its proposed findings and recommendations. The public shall be permitted to present written and oral comments on the proposed findings and recommendations at that public hearing, or hearings, as the case may be. Thereafter, the commission shall report its findings and recommendations to the Governor and Legislature, along with any recommendations for legislative action, as follows:

(1) The report and recommendations concerning the scientific basis for selecting risk management standards shall be delivered no later than six months after the effective date of P.L.1993, c.139; and

(2) The report and recommendations concerning risk assessment methodologies and their efficacy and applicability for establishing remediation standards shall be delivered no later than one year after the effective date of P.L.1993, c.139.

(f) The commission shall expire upon the issuance of its final report.

#### **Report to Governor and Legislature - Strict, Joint and Several Liability Scheme**

Within nine months of the enactment of P.L.1993, c.139, the Commissioner of the Department of Environmental Protection and Energy, in consultation with the Attorney General, shall issue a report to the Governor and the Legislature concerning the effectiveness and fairness of the imposition of strict, joint and several liability on persons who have discharged, or are in any way responsible for, a hazardous substance pursuant to P.L.1976, c.141 (N.J.S.A. 58:10-23.11 et seq.). The report shall:

- (a) analyze methods to expedite the securing of funding for the remediation of hazardous discharge sites;
- (b) analyze methods to lower the public and private legal costs associated with the determinations of liability for discharges of hazardous substances;
- (c) examine the historical and legal basis for the imposition of strict, joint and several liability for the discharge of a hazardous substance;
- (d) discuss the effect on the Department of Environmental Protection and Energy's site remediation program of modifying the existing statutory scheme of strict, joint and several liability and replacing it with another standard of liability; and
- (e) review and discuss methods to enhance the fairness of the imposition of liability for hazardous substance discharges including the possible use of mixed public and private funding for site remediations and the use of de minimis settlements for potentially responsible parties.

In preparing its report, the department shall review the provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," as amended by the "Superfund Amendments and Reauthorization Act of 1986," the regulations and policies of the federal Environmental Protection Agency in implementing that act, proposed changes being considered by Congress in the reauthorization of that act, and the discharge liability laws of other states as may be relevant. The report shall contain recommendations for regulatory or legislative actions.

### **Certification Program**

Within six months of the enactment of P.L.1993, c.139, the Commissioner of Environmental Protection and Energy shall issue a report to the Governor and the Legislature providing an evaluation, recommendations, and a plan of action for developing and implementing a certification program for persons engaging in the remediation of contaminated sites. In preparing his report, the commissioner shall review the certification programs for persons engaging in the remediation of contaminated sites which other states have implemented and which may be relevant.

### **Effective date**

**This act shall take effect immediately except that section 44 shall remain inoperative until the 90th day following enactment. Approved June 16, 1993.**